



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: MISHRA, et al.
Serial No.: 09/580,519
Filing Date: May 25, 2000
Group Art Unit: 2141
Examiner: Adnan M. Mirza
Title: ELEMENT MANAGEMENT SYSTEM WITH DYNAMIC
DATABASE UPDATES BASED ON PARSED SNOOPING

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

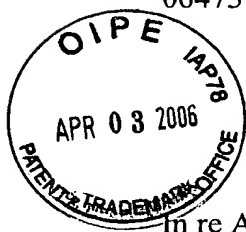
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Willie Jiles

Willie Jiles

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Title: ELEMENT MANAGEMENT SYSTEM WITH
DYNAMIC DATABASE UPDATES BASED ON
PARSED SNOOPING

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P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. The Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

Applicants contend that the rejection of Claims 1-11 on prior art grounds contain clear legal and factual deficiencies, as described below. In a Final Office Action dated January 3, 2006, Claims 1-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,094,145 issued to Vilain et al. ("*Vilain*") and U.S. Patent No. 6,108,309 issued to Cohoe et al. ("*Cohoe*"). Applicants request a finding that these rejections are improper and allowance of these claims.

A. Claims 1-11 are Allowable over the Cited References

With respect to independent Claim 1, the Examiner's position has been and continues to be that the proposed *Vilain-Cohoe* combination (and specifically, *Cohoe*) discloses "one or more background processes . . . which monitor communications over said control channel and which parse all communications which imply network element status changes and . . . which dynamically update said database accordingly, in real time." In the Final Office Action mailed January 3, 2005, Applicants were directed to Column 9, lines 10-21 of *Cohoe*, which discloses a shared memory that is organized into three segments. (Final Office Action, page 6).

In a response submitted on February 3, 2006, Applicants contend that the shared memory of *Cohoe* is not analogous to Applicants' recited "one or more background processes . . . which monitor communications over said control channel and which parse all communications which imply network element status changes and . . . which dynamically update said database accordingly, in real time." Specifically, Applicants argued that the portion of the reference relied upon by the Final Office Action merely details the types of information stored in three distinct segments of the shared memory. Applicants also argued that *Cohoe* the ask-and-answer format of state requests, as disclosed in *Cohoe*, is contrary to core processes that "monitor communications," "parse all communications which imply network element status changes," and "dynamically update memory in real time," as recited in Applicants' Claim 1. These positions are described more fully in the cited portions of Applicants' September 7 Response.¹

¹ It is noted in the OG Notice at <http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm> that "Applicants are encouraged to refer to arguments already of record rather than repeating them in the request." Accordingly, Applicants refer here to, and summarize, the previous arguments rather than reciting them explicitly.

An Advisory Action mailed on February 27, 2006, fails to address Applicants arguments made in the February 3, 2006 Response. Rather, the Advisory Action states:

Applicant argued that prior art did not disclose “one or more operator-driven processes which monitor and manage network elements in real time, using at least one telecommunications network control channel.” As to applicant’s argument *Vilain* disclosed, “The message transfer point PTMG comprises a plurality of management message transfer devices DTMG1, DTMGk each serving a set of management applications EAG1, EAGk and management applications has an interface (e.g. IN1) to communicate with management message transfer device serving that set (col. 4, lines 9-16). One [of] ordinary skill in the art at the time of the invention know that management of message transfer devices serves the purpose of managing the Network Elements.

Thus, the Final Office Action focuses upon the “one or more operator-driven processes” recited in Applicants’ Claim 1 rather than the “one or more background processes” also recited in Applicants’ Claim 1. Although Applicants had previously made arguments with respect to the “one or more operator-driven processes” and the *Vilain* reference, Applicants had elected (without prejudice) in the Response submitted on February 3, 2006, to focus Applicants’ arguments on the “one or more background processes.” Because Applicants’ arguments with respect to the “one or more background processes” continue to have merit and *Cohoe* fails to disclose, teach, or suggest the recited “one or more background processes,” Applicants submit that the Final Office Action is legally and factually flawed.

First, Applicants demonstrated in Applicants' Response dated November 3, 2005, at Pages 8-9 and then again in Applicants’ Response dated February 3, 2006, that the system of *Cohoe* does not “monitor communications,” “parse all communications which imply network element status changes,” and “dynamically update the memory in real time,” as recited in Claim 1. Specifically, *Cohoe* discloses that “network elements also receive commands from the [Network Management System (NMS)] including: audit requests, provisioning requests, state requests, and switching commands.” (Column 4, lines 17-19). Thus, the state requests generated by the NMS of *Cohoe* are transmitted to the network elements and the network elements respond with their respective states. Memory 140 is updated to included the state information. There is no disclosure in *Cohoe*, however, of “one or more background processes . . . which monitor communications over said control channel and which parse all

communications which imply network element status changes and . . . which dynamically update said database accordingly, in real time,” as recited in Applicants’ Claim 1.

For these reasons, and the above-referenced reasons described in Applicants’ Response dated February 3, 2006, Applicants contend that the rejection of independent Claim 1 is improper.

Independent Claims 3 and 7 recite certain features and operations that are analogous to the features of Claim 1. For example, Claim 3 recites “monitoring communications between a network element manager and a plurality of network elements,” “parsing messages received from one or more of the plurality of network elements, which include updated configuration status information,” and “dynamically updating portions of the configuration status information.” As another example, Claim 7 recites a processor being “operable to parse messages received from one or more of the plurality of network elements, which includes updated configuration status information” and “dynamically update portions of the configuration status information with portions of the updated status information.” Because the recited claim elements include certain features and operations that are analogous to the features of Claim 1, the treatment of the claim elements in the Final Office Action is similar to that described above with regard to Claim 1. Accordingly, for reasons similar to those described above with respect to Claim 1, Applicants contend that the rejections of independent Claims 3 and 7 are improper.

B. The Proposed *Vilain-Cohoe* Combination is Improper

With respect to Claims 1-11, the Final Office Action of January 3, 2006 (“Final Office Action”) contends that the proposed *Vilain-Cohoe* combination is a proper combination. In response, Applicants provided a detailed summary of the standard for establishing a *prima facie* case of obviousness based on a combination of prior art references. This summary is described in Applicants’ Response dated February 3, 2006 at Pages 9-11 under the heading “The Legal Standard.” Additionally, Applicants argued that the rejection of Claims 1-11 under the *Vilain-Cohoe* combination is improper since the Examiner did not point to any portion of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the core processes disclosed in *Cohoe* into the network management functionality disclosed in *Vilain*. More specifically, Applicants contend that it is not sufficient for an Examiner to merely point to a purported

advantage of one reference and conclude that it would have been obvious to combine that reference with other references simply based on that advantage. This position is described more fully in the cited portions of Applicants' Response dated February 3, 2006, at Pages 11-12 under the heading "The Analysis."

The Advisory Action mailed February 27, 2006, is quoted in total above and does not address Applicants' arguments relating to the impropriety of the combination. Applicants respectfully contend that the basis for the combination as provided in the Final Office Action is legally and factually flawed for the reasons provided in Applicants' Response dated February 3, 2006.

CONCLUSION

As the rejections of Claims 1-11 contain clear deficiencies, Applicants respectfully request a finding of allowance of Claims 1-11. To the extent necessary, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants

A handwritten signature in black ink, appearing to read "Jenni R. Moen". The signature is fluid and cursive, with the first name "Jenni" and last name "Moen" clearly distinguishable.

Jenni R. Moen
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Date: March 31, 2006

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